IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 9848 of 2001

For Approval and Signature:

HONOURABLE MR.JUSTICE AKIL KURESHI

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

==========

BHAVANABEN BRAHMANIYA - Petitioner(s)
Versus
MANAGER & 2 - Respondent(s)

==========

Appearance :
MR DEVESH A BHATT for Petitioner(s) : 1,
MS LILU K BHAYA for Respondent(s) : 1, 3,
NANAVATI ASSOCIATES for Respondent(s) : 2,
==========

CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 24/03/2006

ORAL JUDGMENT

1.In the present petition, wife of a deceased employee of Bank of India has prayed for family pension. It is the case of the petitioner, about which there is no serious

dispute, that the husband of the petitioner was employed by the respondent, Bank of India. He was appointed as a full time Sepoy on 1.11.93. Unfortunately, he died on 13.5.94. It is the case of the petitioner that the Bank introduced a Pension Scheme which included provisions for family pension. The scheme was introduced by circular dated 1.11.95. Certain provisions were made to include within its sweep some of the employees retired or died on or after 1.11.93. In particular, regulation 39 of the said regulations pertained to family pension. Family pension was available in case of employees who died after completion of one year of continuous service or in case of employee who died before completion of one year of continuous service if, immediately prior to his appointment to the service, he was examined by a medical officer approved by the Bank and declared fit for employment in the Bank.

2. It is the case of the Bank that sub-clause (b) of clause (1) of regulation 39 of the Banking Regulations would be applicable in the present case since the husband of the petitioner died before completion of one year of regular service. It is suggested that immediately prior to his appointment in service, he was

not examined by the medical officer and found fit for employment in the Bank. In that view of the matter, it is contended that the petitioner is not entitled to receive family pension. Learned advocate appearing for the Bank submitted that on account of the sad demise of the husband of the petitioner, the petitioner has already been given compassionate appointment by the Bank.

3. The factual aspects are not seriously in dispute. It is not in dispute that the husband of the petitioner was employed by the Bank but died before completion of one year of regular service. It is also not in serious dispute that the husband of the petitioner was not examined by a medical officer approved by the Bank and declared fit for employment immediately prior to his regular employment. Though the petitioner has referred to the medical certificate, the same was for the period much prior to the absorption of the husband of the petitioner regularly in the Bank's establishment. The same was for the purpose of ad-hoc service of her husband and was in any case not immediately prior to the appointment to the post in question.

4. In above view of the matter, the claim of the petitioner for being granted family pension as claimed

by the petitioner is not justified. The petition is therefore rejected. Rule is discharged with no order as to costs.

(Akil Kureshi, J.)

(vjn)